

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GUN OWNERS OF AMERICA, INC.,)
8001 Forbes Place)
Suite 202)
Springfield, VA 22151)

Plaintiff,)

v.)

UNITED STATES DEPARTMENT)
OF JUSTICE,)
950 Pennsylvania Avenue, N.W.)
Washington, DC 20530,)

Defendant.)

Civil Action No. 19-cv-3135

COMPLAINT

Plaintiff Gun Owners of America, Inc. brings this action against Defendant the United States Department of Justice (“DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges the following:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Gun Owners of America is a Virginia non-stock corporation with its principal place of business in Springfield, Virginia. Gun Owners of America is organized and operated as a non-profit membership organization that is exempt from federal income taxes

under Section 501(c)(4) of the U.S. Internal Revenue Code. Gun Owners of America seeks to promote social welfare through informing and educating the public on and conducting activities in defense of the Second Amendment and the right to keep and bear arms.

4. Defendant, the United States Department of Justice, is an agency of the United States Government and is headquartered at 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On June 11, 2019, Plaintiff submitted an FOIA request, by e-mail, to the Mail Referral Unit (“MRU”) within the Department of Justice. *See* Exhibit A.

6. The request sought records related to the “Privacy Policy” contained on Defendant's website, which states that “Although the primary purpose of automatically collecting this kind of information is not to track individuals who visit this site, in certain circumstances and consistent with federal law, the Department may take additional steps to identify you using this information and may share this information, including your identity, with other agencies.”¹

7. Specifically, Plaintiff's FOIA request sought:

“(1) Records identifying the ‘additional steps’ DOJ takes to identify some visitors;

(2) Records describing what additional ‘information’ is collected;

(3) Records identifying the ‘other agencies’ (including federal, state, local, and international government agencies and/or nongovernmental groups) with whom information is shared;

(4) Records identifying the number of individuals about whom DOJ has collected this ‘information’; and

(5) Records describing the purpose(s) for which this information is collected and used.”

¹ <https://www.justice.gov/doj/privacy-policy>.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to respond to Plaintiff's FOIA requests within 20 working days of this request. Defendant did not respond.

9. In the following months, counsel for Plaintiff attempted on multiple occasions to inquire with the MRU as to the status of Plaintiff's FOIA request. However, the MRU does not answer its phone number (202-616-3837), and there is no voicemail system. After ringing numerous times, the operator states "The wireless customer you are calling is not available. Please try again later."

10. The other listed DOJ MRU phone number (301-583-7354) does not ring at all, and simply goes to a message that "The party you have called ... is not available. You may leave a message after the tone." Messages left after the tone were not returned.

11. On October 8, 2019, counsel for Plaintiff spoke with the DOJ Office of Information Policy ("OIP") by phone, seeking an update on the status of Plaintiff's request. The same day, counsel forwarded by email a copy of Plaintiff's original FOIA request, so that it could be located by the MRU. *See* Exhibit B.

12. On October 18, 2019, the OIP responded, stating that "The Mail Referral Unit has located your request and is forwarding it to this Office for processing. Once we are in receipt, you will be advised of the assigned tracking number." *See* Exhibit C.

13. This acknowledgment from Defendant demonstrates that the DOJ received Plaintiff's FOIA request when it was originally submitted on June 11, 2019, but has failed to process that request in any way.

14. To date, Plaintiff has received no substantive response of any kind from Defendant.

15. The statutory deadline has long passed, and Defendant has failed to provide a substantive response to Plaintiff's FOIA request. As of the date of this Complaint, Defendant has failed to produce a single responsive record or assert any claims that responsive records are exempt from production.

16. Since Defendant has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff is deemed to have fully exhausted any and all administrative remedies with respect to its FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

17. Plaintiff is a nonprofit organization seeking information with which to inform and educate the public about the workings of government. Release of the records requested is in the public interest.

CAUSE OF ACTION
(Violation of FOIA, 5 U.S.C. § 552)

18. Plaintiff realleges paragraphs 1 through 17 as though fully set forth herein.

19. DOJ has failed to process and make a determination regarding Gun Owners of America's June 11, 2019 FOIA request within the statutory time limit and is unlawfully withholding records requested by Gun Owners of America pursuant to 5 U.S.C. § 552.

20. Gun Owners of America is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Gun Owners of America will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Gun Owners of America requests that the Court grant all appropriate relief for the violations of FOIA alleged above, including:

- a. An order and judgment requiring the Defendant to conduct a search for any and all records responsive to Gun Owners of America's FOIA request, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of all records responsive to Gun Owners of America's requests;
- b. An order and judgment requiring the Defendant to produce, by a date certain, any and all non-exempt records responsive to Gun Owners of America's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;
- c. An order and judgment permanently enjoining Defendant from continuing to withhold any and all non-exempt records in this case that are responsive to Gun Owners of America's FOIA request;
- d. Attorneys' fees and costs to Plaintiff pursuant to any applicable statute or authority, including 5 U.S.C. § 552(a)(4)(E); and
- e. Any other relief that this Court in its discretion deems just and proper.

/s/ Robert J. Olson

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Dated: October 18, 2019